

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** All County Assessors and Auditors

**FROM:** Micah G. Vincent, Commissioner

**RE:** Composition of County PTABOs; Assessor, Appraiser, and Tax Representative Standards of Conduct, HEA 1234-2014 & SEA 421-2014

**DATE:** May 19, 2014

On March 25, 2014, Governor Pence signed into law House Enrolled Act 1234-2014 ("HEA 1234") and Senate Enrolled Act 421-2014 ("SEA 421"). Effective July 1, 2014, both HEA 1234 and SEA 421, among other things, make changes to the law respecting the composition of county property tax assessment boards of appeals ("PTABOA"), and establishes standards of conduct for assessors, appraisers, and tax representatives.

The Acts have identical provisions concerning these subject matters. However, because each Act contains additional provisions not found in the other, though concerning entirely different subjects, this memorandum will include citations to both Acts. Please note that this memorandum is for informative purposes only and is not a substitute for reading the law.

## **I. Composition of County PTABOs, IC 6-1.1-28-1**

Section 3 of HEA 1234 and Section 1 of SEA 421 amend IC 6-1.1-28-1 respecting PTABOs, in the following ways.

First, in a county with a five-member PTABOA, the county fiscal body may waive the requirement that at least one (1) of the PTABOA members appointed by the fiscal body must be a certified level two or level three assessor-appraiser. In a county with a three-member PTABOA, the county fiscal body may waive the requirement that the PTABOA member appointed by the fiscal body must be a certified level two or level three assessor-appraiser.

Second, an employee of the township assessor or county assessor ("employee"), or a professional appraiser that contracts with a county ("appraiser") may not serve as a voting member of a PTABOA in a county where the employee or appraiser is employed.

## **II. Assessor, Appraiser, and Tax Representative Standards of Conduct, IC 6-1.1-35.7**

Section 4 of HEA 1234 and Section 2 of SEA 421 add IC 6-1.1-35.7 as a new chapter to the Indiana Code establishing standards of conduct for assessors, appraisers, and tax representatives.

#### Definitions, IC 6-1.1-35.7-1 & 6-1.1-35.7-2

“Appraiser” has the meaning set forth in IC 6-1.1-31.7-1; that is, “a professional appraiser or a professional appraisal firm that contracts with a county under IC 6-1.1-4.”

“Tax representative” means a person who represents another person at a proceeding before the county property tax assessment board of appeals (“PTABOA”) or the Department of Local Government Finance (“Department”). The term does not include the following:

- 1) The owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal.
- 2) A permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal.
- 3) A representative of the local government unit appearing on behalf of the unit.
- 4) A certified public accountant (“CPA”), when the CPA is representing a client in a matter that relates only to personal property taxation.
- 5) An attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the Department to appear pro hac vice.

#### Standards for Assessors & Appraisers, IC 6-1.1-35.7-3 & 6-1.1-35.7-4

An individual who is a township assessor, a county assessor, an employee of the township assessor or county assessor, or an appraiser shall adhere to the Uniform Standards of Professional Appraisal Practice in the performance of the individual's duties.

An individual who is a township assessor, a county assessor, an employee, or an appraiser shall not do any of the following:

- 1) Conduct an assessment that includes the reporting of a predetermined opinion or conclusion.
- 2) Misrepresent the individual's role when providing valuation services that are outside the practice of property assessment.
- 3) Communicate assessment results with the intent to mislead or defraud.
- 4) Communicate a report that the individual knows is misleading or fraudulent.
- 5) Knowingly permit an employee or other person to communicate a misleading or fraudulent report.
- 6) Engage in criminal conduct.
- 7) Willfully or knowingly violate the requirements of IC 6-1.1-35-9 (regarding release of confidential information).
- 8) Perform an assessment in a grossly negligent manner.
- 9) Perform an assessment with bias.
- 10) Advocate for an assessment. However, this provision does not prevent a township assessor, a county assessor, an employee, or an appraiser from defending or explaining the accuracy of an assessment and any corresponding methodology used in the assessment at a preliminary informal hearing, during settlement discussions, at a public hearing, or at the appellate level.

#### Certification Appeal Board, IC 6-1.1-35.7-4(d) & (e)

New subsection IC 6-1.1-35.7-4(d) establishes a certification appeal board (“Board”). The sole purpose of the Board is to conduct an appeal hearing regarding the Department’s revocation of a person’s assessor-appraiser certification based on a claim of gross incompetence. The Board consists of the following seven (7) members:

- 1) Two (2) representatives of the Department appointed by the Department commissioner, who must designate one (1) of the appointed representatives as the chairperson of the board.
- 2) Two (2) individuals appointed by the governor who must be township or county assessors.
- 3) Two (2) individuals appointed by the governor who must be licensed appraisers.
- 4) One (1) individual appointed by the governor who must be a resident of Indiana.

Not more than four (4) members of the Board may be members of the same political party, and each member of the board serves at the pleasure of the person who appointed the member.

Under IC 6-1.1-35.7-4(e), the Board must meet as often as necessary to properly perform its duties.

#### Revocation Based on Gross Incompetence and Appeals to the Board, IC 6-1.1-35.7-4(a) through (c)

A township assessor, a county assessor, an employee, or an appraiser

- 1) must be competent to perform a particular assessment;
- 2) must acquire the necessary competency to perform the assessment; or
- 3) shall contract with an appraiser who demonstrates competency to do the assessment.

The Department may revoke the certification under 50 IAC 15 for gross incompetence in the performance of an assessment. An individual whose certification is revoked for gross incompetence may appeal the Department’s decision to the Board. A decision of the Board may be appealed to the Indiana Tax Court in the same manner that a final determination of the Department may be appealed under IC 33-26.

Under IC 6-1.1-35.7-5, the DLGF may revoke a certification issued under 50 IAC 15 for not more than three (3) years if the Department determines by a preponderance of the evidence that the township assessor, county assessor, employee, or appraiser violated any provision of IC 6-1.1-35.7. If an appraiser’s certification is revoked,

- 1) any contract for appraisal of property in Indiana that the appraiser has entered into is void; and
- 2) the appraiser may not receive any additional payments under the contract.

A contract entered into by the appraiser for appraisal of property in Indiana must contain a provision specifying that the contract is void if the appraiser’s certification is revoked under IC 6-1.1-35.7.

#### Tax Representative Standards of Conduct, IC 6-1.1-35.7-6 & 6-1.1-35.7-7

A tax representative may not do any of the following:

- 1) Use or participate in the use of any false, fraudulent, unduly influencing, coercive, unfair, misleading, or deceptive statement or claims with respect to any matter relating to the practice before the PTABOA or the Department.
- 2) Knowingly misrepresent any information or act in a fraudulent manner.
- 3) Prepare documents or provide evidence in a property assessment appeal unless the representative is authorized by the property owner (or person liable for the taxes under IC 6-1.1-2-4) to do so and any required authorization form has been filed.
- 4) Knowingly submit false or erroneous information in a property assessment appeal.
- 5) Knowingly fail to use the appraisal standards and methods required by rules adopted by the Department, Indiana Board of Tax Review ("IBTR"), or PTABOA when the representative submits appraisal information in a property assessment appeal.
- 6) Knowingly fail to notify the property owner (or person liable for the taxes under IC 6-1.1-2-4) of all matters relating to the review of the assessment of taxpayers' property before the property tax assessment board of appeals or the Department, including, but not limited to, the following:
  - a. The tax representative's filing of all necessary documents, correspondence, and communications with the PTABOA or Department.
  - b. The dates and substance of all hearings, onsite inspections, and meetings.

The Department may revoke the certification of a tax representative for the following:

- 1) Violation of any rule applicable to certification or practice before the Department, the IBTR, or the PTABOA.
- 2) Gross incompetence in the performance of practicing before the PTABOA, the Department, or the IBTR.
- 3) Dishonesty, fraud, or material deception committed while practicing before the PTABOA, the Department, or the IBTR.
- 4) Dishonesty, fraud, material deception, or breach of fiduciary duty committed against the tax representative's employer or business associates.
- 5) Violation of the standards of ethics or rules of solicitation adopted by the Department.

### **Contact Information**

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